

Docket No.: 122.1435

Serial No. 09/772,919

REMARKS

In accordance with the foregoing, claims 9, 16 and 17 have been amended to improve form. No new matter is present and, accordingly, approval and entry of the amended claims 9, 16 and 17 are respectfully requested.

STATUS OF CLAIMS

All of the pending claims 1-17 are finally rejected.

**PAGE 2: REJECTION OF CLAIMS 1-17 FOR OBVIOUSNESS UNDER 35 U.S.C. §103(a)
OVER U.S. PATENT 9,078,960 (BALLARD) IN VIEW OF JAPANESE UNEXAMINED PATENT
PUBLICATION NO. 3-233751 (KOKAI)**

The rejection is respectfully traversed.

BALLARD U.S. PATENT 6,078,960

The reference Ballard discloses a system related to client-side load-balancing in a client server network. In the system of Ballard, the client server refers to a "LOAD BALANCE LIST" which indicates respective loading states in each of a plurality of servers connected to the client server network, and accesses data which is stored in each one of the servers. The "LOAD BALANCE LIST" is updated at each data access.

The samples of the "LOAD BALANCE LIST" are shown in FIGS. 4A-4B of Ballard. According to the samples, it appears that the "LOAD BALANCE LIST" indicates only the loading states of the plurality of servers. Although Ballard discloses that the "LOAD BALANCE LIST" is referred to when the server accesses another server, Ballard does not disclose "measuring operating time of each of a plurality of information apparatuses", as disclosed and claimed in the present application.

Nevertheless, the Examiner states that Ballard discloses "determining rotation candidates among said plurality of information apparatuses and sending information apparatuses rotation messages to said rotation candidates" as in the present invention. However, in the system of Ballard, the client refers to the "LOAD BALANCE LIST" and only accesses the server selected from the "LOAD BALANCE LIST". Since the system does not rotate between servers connected to the network, sending rotation messages to the rotation candidates is not necessary and would serve no purpose to do so in Ballard.

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Additionally, in the system of Ballard, since measuring the operating time of each of a plurality of servers is not done, consequently, rotation candidates among servers cannot be determined based on accumulated operating times of the respective servers with a view to equalizing the accumulated operating times of the respective servers.

Since rotation among servers is not done in the system of Ballard, a "backup unit for backup processing data stored in the rotation candidate information apparatuses in accordance with the messages", furthermore, is not necessary in the system of Ballard.

Therefore, it is submitted that the system described in the reference Ballard differs substantially from the operating system of the present invention.

KOKAI JAPANESE UNEXAMINED PATENT PUBLICATION NO. 3-233751

"Kokai" discloses an integrated control system for a multi-function terminal and collecting accumulated usage time of a plurality of terminal equipments. However, "Kokai" does not disclose "determining rotation candidates among said plurality of information apparatuses and sending information apparatuses rotation messages to said rotation candidates" and "backup processing data stored in the rotation candidate information apparatuses in accordance with the messages" as claimed in the present application.

Therefore, it is submitted that the control system described in "Kokai" likewise differs from the operating system of the present invention.

PAGE 6 OF THE OFFICE ACTION: EXAMINER'S "RESPONSE TO ARGUMENTS"

The Examiner, responding to Applicant's Argument that Ballard does not disclose "Measuring Operating Time of Each of a Plurality of Information Apparatuses," states that:

In this case, the "load" is interpreted as "operating time" as claimed by the invention.

(Action at page 6)

Applicants submit that this is contrary to the teaching of Ballard. The load balance lists shown in FIGS. 4A and 4B of Ballard represent the actual load percentage for each of server computers 1 to 4, accessed at some point in time.

In the present invention, the "operating time" for each of a plurality of computers in accordance with the present invention is monotonically increasing in proportion to the operation quantity of the computer. According to the present invention, since the numerical value of operating time for each of the plurality of information apparatuses is summed cumulatively, the

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volume, or total, accumulation accurately represents the operational status of each of the information apparatuses.

Therefore, since the "load" of Ballard differs from the "operating time" measured and used in the present invention, the "load" of Ballard cannot be interpreted as the "operating time" of the present invention.

Noting the Examiner's reliance on the website "Webopedia" for an authoritative definition of "round robin" (see Office Action at page 6 in "Response to Arguments", the third paragraph, the last line (four lines from the end of page 6) and a copy of which is attached to the Action, Applicants conducted a search on "Webopedia" for "load", "load balancing" and "Network Load Balancing" and the results are attached as Exhibits A, B and C, respectively, none of which suggests that load can be interpreted as "operating time". Exhibit A at page 2 explains:

In networking, load refers to the amount of data (traffic) being carried by the network.

Exhibit B provides an expanded explanation of "load balancing" -- and, again, makes no reference to "operating time".

Exhibit C is to like effect.

Hence, the "Webopedia" definitions offer no support for, and even disagree with the Examiner's "interpretation". Applicants point out, on the other hand, that "Webopedia" is not considered an authoritative source of definitions of technical terms on a random basis and, as at best understood by the undersigned counsel of record is an informal accumulation of terms from random public contributors -- a situation which is very much evidenced by the parenthetical "special thanks" to ...Lopez for providing the updated definition for this term." appearing at the bottom of the "round robin DNS" definition from the "Webopedia" two page print-out which the Examiner cited and attached to the outstanding Office Action.

The Examiner's interpretation of "operating time", thus, is not based on any authoritative source and, instead, at most constitutes a fact "within the personal knowledge..." of the Examiner -- and, accordingly, is subject to the requirements of 37 CFR 1.104(d)(2):

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

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Applicants request that the Examiner submit his declaration or affidavit establishing the basis for his "interpretation" or else withdraw the contention.

PAGE 6 OF THE OFFICE ACTION: THE EXAMINER'S RESPONSE TO APPLICANT'S ARGUMENT THAT BALLARD DOES NOT DISCLOSE ROTATING BETWEEN SERVERS CONNECTED TO THE NETWORK

One of technical features of the present invention is that the system, operating a plurality of information apparatuses has a determining unit for determining rotation candidates among the plurality of information apparatuses based on accumulated operating times of the respective information apparatuses with a view to equalizing the accumulated operating times of the respective information apparatuses and sending information apparatuses rotation messages to the rotation candidates. In this system, the determining unit communicates interactively with the plurality of information apparatuses through the network, after determining rotation candidates among the plurality of information apparatuses.

Therefore, it is submitted that, on this point, the system described in Ballard differs altogether from the operating system of the present invention.

PAGES 6-7 OF THE OFFICE ACTION: EXAMINER'S RESPONSE TO APPLICANT'S ARGUMENTS THAT "KOKAI" FAILS TO TEACH OR DISCLOSE "DETERMINING ROTATION CANDIDATES AMONG SAID PLURALITY OF INFORMATION APPARATUSES AND SENDING INFORMATION APPARATUSES ROTATION MESSAGES TO SAID ROTATION CANDIDATES" AND "BACKUP PROCESSING DATA STORED IN THE ROTATION CANDIDATE INFORMATION APPARATUSES IN ACCORDANCE WITH THE MESSAGES"

As explained above, the system described in the reference Ballard differs from the operating system of the present invention, and hence it is submitted that the invention as claimed herein is not rendered obvious (§103) by any proper combination of Ballard and "Kokai".

LACK OF ANY DEMONSTRATION OF *PRIMA FACIE* OBVIOUSNESS OF THE COMBINATION OF BALLARD AND "KOKAI"

The Action relies solely on the discredited, bare contention that "one of ordinary skill in the art would have been motivated..." to adopt the teaching of "Kokai" in the apparatus of Ballard in advancing the two references in combination in support of the rejections of claims herein. (See, e.g., page 3, penultimate paragraph -- the only location in the Action in which any contention whatsoever is presented as to the obviousness of the combination.)

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It is submitted that the Action fails to satisfy the requirement of a *prima facie* demonstration of obviousness of the combination. See MPEP 706.02(j), which emphasizes that the Examiner should set forth in the Office Action: (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (B) the difference or differences in the claim over the applied reference(s), (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

CONCLUSION

It is submitted that the foregoing has demonstrated that the pending claims herein distinguish patentably over the references and rejections of record. There being no other objections or rejections, it is submitted that the application is in condition for allowance, which action is earnestly submitted.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: July 7, 2006

By: 
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Registration No. 22,010

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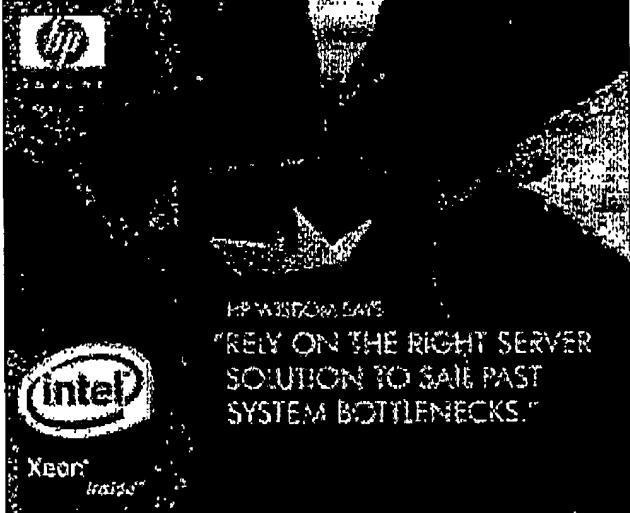
load

Last modified: Sunday, September 01, 1996

(1) To install. For example, to load a disk means to mount it in a disk drive.

(2) To copy a program from a storage device into memory. Every program must be loaded into memory before it can be executed. Usually the loading process is performed invisibly by a part of the operating system called the loader. You simply enter the name of the program you want to run, and the operating system loads it and executes it for you.

(3) In programming, load means to copy data from main memory into a data

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 An advertisement for Symantec Data Management Solutions. It features the Symantec logo and the text "Data Management Solutions".

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Optimizing Performance of the Continuous Protection Server
 The stress points that continuous data protection places on system

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(4) In networking, load refers to the amount of data (traffic) being carried by the network.

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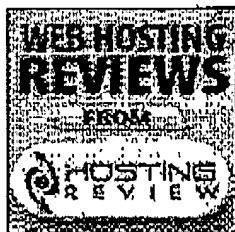
 

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Network Load Balancing

Last modified: Wednesday, February 08, 2006

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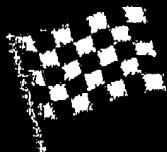
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